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Nos. 98-1701 & 98-1706

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IN THE

Supreme Court of the United States

THE UNITED STATES OF AMERICA,
Petitioner,
v.
GARY LOCKE, GOVERNOR OF THE STATE OF WASHINGTON, *et al.*,
Respondents.

THE INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS,
Petitioner,
v.
GARY LOCKE, GOVERNOR OF THE STATE OF WASHINGTON, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE GOVERNMENTS OF BELGIUM, DENMARK, FINLAND, FRANCE, GERMANY, GREECE, ITALY, JAPAN, THE NETHERLANDS, NORWAY, PORTUGAL, SPAIN, SWEDEN, AND THE UNITED KINGDOM AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTERESTS OF THE *AMICI CURIAE*	2
SUMMARY OF ARGUMENT	3
ARGUMENT	4
I. THE UNITED STATES IS PARTY TO INTERNATIONAL AGREEMENTS THAT ESTABLISH UNIFORM STANDARDS AND REGULATIONS RESPECTING SHIPBOARD MEASURES TO PREVENT POLLUTION OF THE MARINE ENVIRONMENT	4
A. SOLAS: The International Convention for the Safety of Life at Sea, 1974, as amended	8
B. STCW: International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978, as amended in 1995	9
C. MARPOL: The 1978 Protocol Relating to the International Convention for the Prevention of Pollution from Ships, 1973, as amended	11
II. THE WASHINGTON STATE REGULATIONS CONFLICT WITH THE INTERNATIONAL STANDARDS AND REGULATIONS AND ENDANGER THE UNIFORMITY AND RECIPROCITY THAT ARE CRITICAL TO ACHIEVING INTERNATIONAL COOPERATION ON TANKER SAFETY AND PROTECTION OF THE MARINE ENVIRONMENT	12
CONCLUSION	19

TABLE OF AUTHORITIES

CASES — Page

Askew v. American Waterways Operators, Inc., 411 U.S. 325 (1973) 5
Gibbons v. Ogden, 24 U.S. (9 Wheat.) 1 (1824) 13
Hines v. Davidowitz, 312 U.S. 52 (1941) 13
Japan Line, Ltd. v. County of Los Angeles, 441 U.S. 434 (1979) 17, 18
Kelly v. Washington ex rel. Foss Co., 302 U.S. 1 (1937) 4-5
Kolovrat v. Oregon, 366 U.S. 187 (1961) 17
Lauritzen v. Larsen, 345 U.S. 571 (1953) 14, 15
Mali v. Keeper of the Common Jail (Wildenhus' Case), 120 U.S. 1 (1887) 5
Michelin Tire Corp. v. Wages, 423 U.S. 276 (1976) 15
Ray v. Atlantic Richfield Co., 435 U.S. 151 (1978) .. 4, 5
Rice v. Santa Fe Elev. Corp., 331 U.S. 218 (1947) .. 5
United States v. Belmont, 301 U.S. 324 (1937) 13

TREATIES, STATUTES AND REGULATIONS

Convention on the International Martime Organization, Mar. 6, 1948, 9 U.S.T. 621, 289 U.N.T.S. 48, as amended 6
International Convention for the Safety of Life at Sea, 1974, Nov. 1, 1974, 32 U.S.T. 47, Annex, Int'l Martime Org., Doc. Sales No. IMO-110(E) (1997) ..... *passim*
International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, July 7, 1978, Int'l Maritime Org., Doc. Sales No. IMO-945E (1996) ..... *passim*
Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, Feb. 17, 1978, Int'l Maritime Org., Doc. Sales No. IMO-520(E) (1997) ..... *passim*
Resolution 787 of the 19th IMO Assembly, A.787(19), "Procedures for Port State Control" 12

TABLE OF ~~CONTENTS~~ AUTHORITIES—Continued

Page

Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331 13-14
33 U.S.C. §§ 1901-1911 11
33 U.S.C. § 1904(b) 12
46 U.S.C. § 3303 9
Coast Guard Authorization Act of 1996, Pub. L. No. 104-324, 110 Stat. 3927 12
Exec. Order No. 12,234, 3 C.F.R. 277 (1981) 12
WASH. ADMIN. CODE 16

MISCELLANEOUS

Andrew Pollack, *Two Teams, Two Measures Equaled One Lost Spacecraft*, N.Y. TIMES, October 1, 1999 16
INTERNATIONAL MARITIME ORGANIZATION, IMO: WHAT IT IS, WHAT IT DOES, HOW IT WORKS (1998) 6
INTERNATIONAL TRADE ADMIN., U.S. DEP'T OF COMMERCE, U.S. AGGREGATE FOREIGN TRADE DATA, 1988 2
RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES (1987) 13, 14
U.S. DEPARTMENT OF TRANSPORTATION, AN ASSESSMENT OF THE U.S. MARINE TRANSPORTATION SYSTEM: A REPORT TO CONGRESS (1999) 16
U.S. MARITIME ADMIN., 1997 ANNUAL REPORT 16

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INTERESTS OF THE *AMICI CURIAE*[1]

Like the Government of the United States, the Governments of Belgium, Denmark, Finland, France, Germany, Greece, Italy, Japan, the Netherlands, Norway, Portugal, Spain, Sweden, and the United Kingdom (*Amici* or the *Amici* Governments) have broad interests in maritime affairs, including facilitation of maritime commerce and protection of the maritime environment.[2] In furtherance of these interests, the *Amici* and the United States have worked together in the International Maritime Organization (IMO) and the International Labour Organization (ILO) to develop and adopt international standards and regulations respecting measures to protect the marine environment from ship-source pollution.

These standards and regulations are set forth in a number of multilateral conventions to which the United States is party, including the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS); the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978, as amended in 1995 (STCW); and the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, as amended (MARPOL). The *Amici* believe that the regulation of tanker equipment, personnel, and operations should continue to be considered and established multilaterally in appropriate international fora, principally IMO and ILO.

[1] All parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part. No person or entity other than the *Amici Curiae* has made a monetary contribution to the preparation or submission of this brief.

[2] The United States' trade with the countries represented by the *Amici* amounted to nearly $500 billion in 1998, about one-fourth of the total United States foreign trade. Four of the countries are among the United States' top ten trading partners, with 12 of the 14 among the top 50. Derived from INT'L TRADE ADMIN., U.S. DEP'T OF COMMERCE, U.S. AGGREGATE FOREIGN TRADE DATA, 1998, table 9.

The Washington State regulations on these subjects conflict with the international regime in force for and in the United States and thus breach the United States' obligations under the treaties by which that regime is established. The *Amici* negotiate with the United States on the understanding that it can speak with one voice on matters of foreign affairs and foreign policy, including international maritime affairs. If the Washington State regulations at issue here are permitted to stand, not only will the United States be in breach of its international obligations, but its credibility in future negotiations will also be negatively affected.

The *Amici* formally notified the Government of the United States of their objections to the Washington State regulations in a Note Verbale dated June 14, 1996 (*reprinted* as Appendix L to the Petition for a Writ of Certiorari of the International Association of Independent Tanker Owners). Believing that this Court's resolution of the matter may preclude the necessity of further diplomatic efforts to obtain the United States' conformance to its treaty obligations, the *Amici* file this brief in support of petitioners' efforts to obtain reversal of that portion of the decision of the United States Court of Appeals for the Ninth Circuit that is before this Court.

SUMMARY OF ARGUMENT

The Washington State regulations challenged in this proceeding directly conflict with the international standards and regulations by which the United States, as a party to multiple international conventions, is bound. The United States is bound by treaty to abide by these standards and regulations throughout its territory, internal

laws to the contrary notwithstanding. The Washington regulations are thus a violation of the United States' international obligations. Their enforcement against vessels registered outside the United States in contravention of international law presents a continuing disturbance of international trade and comity and endangers the uniformity and reciprocity that are the keys to achieving international cooperation on tanker safety and protection of the marine environment.

ARGUMENT

As a contracting State to a number of multilateral treaties regarding maritime safety and protection of the marine environment, the United States is obligated to permit a vessel registered by another party to engage in international trade with the United States if the vessel is in compliance with the standards and regulations specified in the treaties. By the regulations addressed in this case, the State of Washington has imposed different and additional requirements on vessels engaged in foreign trade with the United States in waters within Washington State. This imposition of additional requirements as a condition to engaging in trade with the United States is a clear violation of the United States' treaty obligations to the other contracting parties, including the *Amici* Governments.

I. THE UNITED STATES IS PARTY TO INTERNATIONAL AGREEMENTS THAT ESTABLISH UNIFORM STANDARDS AND REGULATIONS RESPECTING SHIPBOARD MEASURES TO PREVENT POLLUTION OF THE MARINE ENVIRONMENT.

This case is not about the authority of the United States to regulate U.S.-flag vessels. Unlike *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978), and *Kelly v. Washington*

ex rel. Foss Co., 302 U.S. 1 (1937), it does not involve the rights of individual states to regulate U.S.-flag vessels.[3] And unlike *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325 (1973), this case does not involve a state's right to impose liability on vessels for damages caused by discharges from those vessels into state waters. Rather, this case entails a state's challenge to the United States' legally binding obligations under treaties to which it is party to allow foreign-flag vessels that are in compliance with treaty standards and regulations to participate in trade with the United States.

Shipping is a truly international enterprise involving vessels that fly the flags of many countries and trade around the world. A vessel engaged in international commerce is affected by the laws of its "flag state"—the nation state under whose laws the vessel is documented or registered and under whose flag it sails—and those of the "port state"—the nation state in whose port the vessel is located. Accordingly, "treaties and conventions have been entered into by nations having commercial intercourse, the purpose of which [is] to settle and define the rights and duties of the contracting parties with respect to each other in these particulars, and thus prevent the inconvenience that might arise from attempts to exercise conflicting jurisdictions." *Mali v. Keeper of the Common Jail (Wildenhus' Case)*, 120 U.S. 1, 12 (1887). Of special importance in the context of this case are several multilateral conventions that establish detailed standards and regulations respecting shipboard measures to prevent pollution of the marine environment. By ratifying these

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[3] Unlike the regulation of U.S.-flag vessels addressed in *Ray* and *Kelly*, regulation of foreign-flag vessels is not within the traditional police powers of the states. *Cf. Ray*, 435 U.S. at 994, *Kelly*, 302 U.S. at 10. *See Rice v. Santa Fe Elev. Corp.*, 331 U.S. 218, 230 (1947) (implying a different analysis when federal law addresses a field that the states have not traditionally occupied).

treaties, the United States accepted the standards and regulations set forth therein as sufficient and appropriate for ships engaged in international trade and agreed to allow vessels in compliance with these standards to engage in international trade with the United States.

For the past 40 years, the focus of national governments for development of international shipping laws and regulations has been the International Maritime Organization (IMO), a specialized agency of the United Nations that is devoted exclusively to maritime matters. Its 157 Member States represent over 98 percent of the world's merchant shipping tonnage. The United States and all *Amici* Governments are Member States of IMO. The Organization was created by a United Nations treaty in 1948, and its first meeting was in 1959. Convention on the International Maritime Organization, Mar. 6, 1948, 9 U.S.T. 621, 289 U.N.T.S. 48, as amended. "From the very beginning, the improvement of maritime safety and the prevention of marine pollution have been IMO's most important objectives." INTERNATIONAL MARITIME ORGANIZATION, IMO: WHAT IT IS, WHAT IT DOES, HOW IT WORKS 3 (1998) (hereinafter, "IMO PAMPHLET").

Each year, IMO Member States send delegations to IMO's London headquarters to attend a wide variety of meetings, most of which are technical in nature. By this means, conventions are developed over months and years and ultimately are approved and sent to governments for ratification. Over 40 conventions and protocols have been adopted in this way, together with over 800 codes and sets of recommendations that complement the treaties themselves.

A notable feature of several important IMO treaties is the "tacit" or "rapid" amendment procedure. This permits Member States to come together at IMO, agree on technical amendments designed to address specific problems, and adopt an accelerated schedule for their entry into force that avoids the delays intrinsic in the usual ratification process. In this way, conventions are regulary updated to keep pace with technical developments, evolution of ship design, and specific problems of safety and environmental protection encountered by Member States.

The United States and the *Amici* Governments are leaders at IMO and in the development of the treaties initiated by that United Nations organization. They expect all contracting states to fulfill their obligations under these treaties and to respect, as provided in each of the treaties, the rights of all ships that meet treaty requirements to engage in international trade.

Of the more than 40 maritime treaties negotiated at IMO, at least three specifically address pollution prevention by establishing standards and regulations dealing with vessel construction, design, equipment, personnel, and operations. These treaties are the International Convention for the Safety of Life at Sea, 1974, as amended, (SOLAS), Nov. 1, 1974, 32 U.S.T. 47; the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978, as amended in 1995 (STCW), July 7, 1978, Int'l Maritime Org., Doc. Sales No. IMO-945E (1996); and the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, as amended (MARPOL), Feb. 17, 1978, Int'l Maritime Org., Doc. Sales No. IMO-520(E) (1997). While other treaties may also address ship-source pollution matters, it is these three treaties with which the Washington State regulations impermissibly conflict.

The following summaries of these conventions do not attempt to recite each provision with which the Washington State regulations conflict. Rather, they describe only those provisions that demonstrate that the United States is obligated, as a party to these treaties, to accord trading privileges to vessels that are in compliance with the standards and regulations prescribed by the conventions respecting shipboard measures to prevent marine pollution. By imposing additional requirements on this subject, the Washington State regulations have placed the United States in violation of its treaty obligations.

A. SOLAS: The International Convention for the Safety of Life at Sea, 1974, as amended.

SOLAS establishes vessel safety, construction, and equipment standards and regulations that are implemented and enforced in the United States and around the world.[4] SOLAS is in force for 138 countries representing 98 percent of the tonnage of the world's merchant fleet, including the United States and the *Amici* Governments. The Contracting Parties expressly recognized that safety of life at sea can best be achieved through "establishing in a common agreement uniform principles and rules" directed to that purpose. SOLAS, 1974, Preamble. The Contracting Parties also agreed to "undertake to promulgate all laws . . . and regulations . . . which may be necessary to give the present Convention full and complete effect." SOLAS, 1974, Art. 1.

SOLAS focuses on protection of life at sea through regulation of vessel construction, fire protection, lifesaving devices, radio communications, navigation equipment and practices, and safety management (for both shoreside and

[4] The full text of SOLAS, including its articles, annexes, and certificates, is set forth in a volume of 542 pages. IMO, SOLAS CONSOLIDATED EDITION, 1997.

shipboard functions).[5] A vessel's compliance with SOLAS is generally determined through inspections and surveys conducted by or on behalf of the flag state, which issues a SOLAS certificate to conforming vessels. The flag state's certificates must be accepted by other countries as evidence of compliance unless there are "clear grounds" for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of the certificates. SOLAS, ch. I, Reg. 19(b). Accordingly, port states are obligated to allow ships with valid SOLAS certificates to operate in their waters while participating in international trade.

By statute, the United States acknowledges and reiterates its obligations under SOLAS, including its obligation to accept certificates issued by flag states that are party to SOLAS. 46 U.S.C. § 3303.[6]

B. STCW: The International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978, as amended in 1995.

STCW focuses on the qualifications and working conditions of seafarers, including prescribed work-hour

[5] SOLAS expressly incorporates the International Safety Management Code, SOLAS, ch. IX, Reg. 3, whose stated objectives are to "ensure safety at sea, prevention of human injury or loss of life, and avoidance of damage to the environment, in particular, to the marine environment, and to property." IMO Resolution A.741(18), Annex ¶ 1.2.1. The Code requires shipowners and operators to observe safe practices in ship operation, provide a safe working environment, establish safeguards against all identified risks, and continuously improve the safety management skills of both shoreside and shipboard personnel, including their readiness to respond to emergencies. *Id.* at ¶ 1.2.2.

[6] The United States does not accept certificates from a nation that does not accord U.S. vessels the privileges that the United States accords to that nation's vessels. 46 U.S.C. § 3303. This is consistent with the principle of reciprocity that underpins most international agreements concerning maritime affairs.

limitations.[7] The Convention has 133 contracting states, including the United States and all *Amici,* representing 98 percent of the world's merchant shipping tonnage. STCW is designed to "establish[] in common agreement international standards of training, certification and watchkeeping for seafarers." STCW, Preamble. The Parties agreed to promulgate all laws and regulations necessary to give effect to the Convention so as to achieve "protection of the marine environment" by ensuring that "seafarers on board ships are qualified and fit for their duties." STCW, art. I.

STCW establishes mandatory standards for seafarer training and qualifications. A vessel's flag state must verify the competence of the vessel's crew in accordance with those standards and issue certificates evidencing compliance. Port states may verify compliance with STCW by checking a seafarer's certificate, which must be accepted unless there are clear grounds for believing that it was fraudulently obtained or that the holder of the certificate is not the person to whom it was originally issued. STCW, art. X, Annex, Reg. I/4(1). The port state must report any deficiencies to the flag state so that corrective action can be taken. *Id.* art. X(2). Failure to correct deficiencies identified by a port state constitutes the only basis upon which the Convention authorizes a Party to detain a foreign-flag vessel in its ports. STCW Annex, Reg. I/4(3). Otherwise, the contracting parties to STCW (including the United States) are obligated to allow vessels that meet STCW requirements to operate in their waters.

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[7] The 1995 amendments entered into force on February 1, 1997. The full text of the Convention, related resolutions and the STCW Code are set forth in a volume of 320 pages. IMO, STCW 95 (1996).

C. MARPOL: The 1978 Protocol Relating to the International Convention for the Prevention of Pollution from Ships, 1973, as amended.

MARPOL is the comprehensive international regime governing discharges of oil and other harmful substances into the sea from ships.[8] MARPOL was adopted to "achieve the complete elimination of intentional pollution of the marine environment by oil and other harmful substances and the minimization of accidental discharge of such substances." MARPOL Preamble. The Contracting Parties agreed that this objective could best be achieved by establishing rules "having a universal purport." *Id.* The Parties also agreed to give effect to the provisions of the Convention, including the Annexes thereto. MARPOL Convention 1973, Art. I; *see also* Protocol of 1978, Art. 1(1). The treaty has 108 contracting states, including the United States and the *Amici* Governments, representing 94 percent of the world's merchant shipping tonnage. The United States and the *Amici* Governments were leaders in the original negotiations and continue to be active participants in updating the treaty through rapid amendment procedures.

As evidence that a vessel has been surveyed and found in compliance with MARPOL's requirements, the vessel's flag state issues an International Oil Pollution Prevention certificate. The statute by which MARPOL is implemented in the United States (the Act to Prevent Pollution from Ships, 33 U.S.C. §§ 1901-1911) specifies that a "certificate issued by a country which is a party to [MARPOL] has the same validity as a certificate issued

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[8] The full text of the MARPOL Convention, including its articles, protocols, annexes, and unified interpretations, is set forth in a volume of 419 pages. IMO. MARPOL 73/78 CONSOLIDATED EDITION, 1997.

by [the Coast Guard]" in implementing MARPOL for U.S.-flag vessels. 33 U.S.C. § 1904(b).

Under each of these conventions, any port state inspections for the purpose of confirming compliance with the international standards and regulations must be conducted by "officers duly authorized by [the port state]." SOLAS, Reg. 19(a); STCW, art. X(1); MARPOL, Reg. 8A(1). In each instance, the authorizing entity must be the party to the convention, *i.e.*, the national government. Thus officials and vessels of the individual states of the United States cannot undertake enforcement action against foreign vessels unless they are authorized to do so by the United States. The officers duly authorized by the United States to serve as Port State Control Officers include employees of the United States Coast Guard. Exec. Order No. 12,234, 3 C.F.R. 277 (1981); Coast Guard Authorization Act of 1996, Pub. L. No. 104-324, § 602, 110 Stat. 3927. Washington State officials have not been so authorized.[9]

II. THE WASHINGTON STATE REGULATIONS CONFLICT WITH THE INTERNATIONAL STANDARDS AND REGULATIONS AND ENDANGER THE UNIFORMITY AND RECIPROCITY THAT ARE CRITICAL TO ACHIEVING INTERNATIONAL COOPERATION ON TANKER SAFETY AND PROTECTION OF THE MARINE ENVIRONMENT.

The Washington State regulations challenged in this case impose requirements different from and in addition to those

[9] Resolution 787 of the 19th IMO Assembly, A.787(19), "Procedures for Port State Control," establishes qualifications for Port State Control Officers, which Washington State officials are unlikely to meet.

prescribed in the SOLAS, STCW, and MARPOL conventions. As a party to those conventions, the United States has agreed that a vessel registered by another contracting party may engage in international trade with the United States if it is in compliance with the standards and regulations specified in the conventions. The State of Washington's imposition of additional requirements as a condition to engaging in trade with the United States is a clear violation of the United States' treaty obligations to the other contracting parties, including the *Amici* Governments.

That the extra-treaty requirements have been imposed by an individual state rather than the United States itself is of no consequence to the other contracting parties.

> The states are unknown to foreign nations . . . . Whatever regulations foreign commerce should be subjected to in the ports of the Union, the general government would be held responsible for them; and all other regulations, but those that Congress had imposed, would be regarded by foreign nations as trespasses and violations of national faith and comity.

Gibbons v. Ogden, 24 U.S. (9 Wheat.) 1, 228-29 (1824) (Johnson, J., concurring); *see also Hines v. Davidowitz*, 312 U.S. 52, 62-63 (1941).[10] Moreover, the United States is required to abide by its treaty obligations throughout its territory. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 322(2); *accord* Vienna

[10] "A State of the United States is not a 'state' under international law . . . , since by its constitutional status it does not have the capacity to conduct foreign relations. The United States alone, not any of its constituent States, enjoys international sovereignty and nationhood." RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 1, note 5 (1987) *See also United States v. Belmont*, 301 U.S. 324, 331-32 (1937).

Convention on the Law of Treaties, May 23, 1969, art. 29, 1155 U.N.T.S. 331. Conflicting internal laws cannot excuse the United States' failure to comply with its treaty obligations. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 115(1)(b); *accord* Vienna Convention on the Law of Treaties, art. 27.

In *Lauritzen v. Larsen*, 345 U.S. 571 (1953), the Court recognized that "the virtue and utility of sea-borne commerce lies in its frequent and important contacts with more than one country," 345 U.S. at 581, and that subjecting vessels to the laws of various nations would cause "a multiplicity of conflicting and overlapping burdens [that] would blight international carriage by sea," *id.* Consequently, in determining which nation's laws should apply in a given situation, the Court turned to "a non-national or international maritime law of impressive maturity and universality." *Id.* That international maritime law "has the force of law . . . from acceptance by common consent of civilized communities of rules designed to foster amicable and workable commercial relations," *id.* at 581-82. It "aims at stability and order through usages which considerations of comity, reciprocity and long-range interest have developed to define the domain which each nation will claim as its own." *Id.* at 582.

The situation here is similar, except that "by common consent of civilized nations," the applicable international maritime law has been set forth in the treaties described in the previous section. Like the "non-national or international maritime law" applied in *Lauritzen*, these treaties are designed to establish "stability and order" by adopting "rules designed to foster amicable and workable commercial relations." These rules include uniform standards and regulations respecting shipboard measures to prevent pollution of the marine environment. And like the

"usages" adopted in *Lauritzen*, these uniform standards and regulations are based on "considerations of comity, reciprocity and long-range interest," and "define the domain which each nation [may] claim as its own."

Even more so than the general international maritime law recognized in *Lauritzen*, this international regime of shipboard measures to prevent pollution of the marine environment has "the force of law." It is a binding treaty commitment of the United States. Permitting the individual states of the United States to adopt and enforce their own regulations respecting shipboard measures to prevent oil pollution not only would violate the United States' international obligations, but, as the *Lauritzen* Court recognized, it would also cause "a multiplicity of conflicting and overlapping burdens [that] would blight international carriage by sea."

The necessity for uniform regulations for foreign vessels engaged in trade with the United States has been recognized from the beginning of the nation. The lack of uniformity in this regard was a major source of dissatisfaction with the Articles of Confederation. "The relative situation of the United States [under the Articles of Confederation] has been found, on trial, to require uniformity in their commercial regulations, as the only effectual policy for obtaining, in the ports of foreign nations, a stipulation of privileges reciprocal to those enjoyed by the subjects of such nations in the ports of the United States . . . ." Resolution of January 21, 1786 (drafted by James Madison) Appointing Virginia Commissioners to the Constitutional Convention, *quoted in Gibbons v. Ogden*, 24 U.S. (9 Wheat.) 1, 225 (1824) (concurring opinion of Johnson, J.). *See also Michelin Tire Corp. v. Wages*, 423 U.S. 276, 283-86 (1976). Uniformity and reciprocity are even more important today,

with the United States almost totally dependent on foreign-flag vessels for its international trade.[11]

Ironically, the Washington State regulations reflect a sound appreciation for the benefits of uniformity. They prescribe a uniform format and arrangement for spill-prevention plans. WASH. ADMIN. CODE § 317-21-100. They mandate uniform use, in that plan, of the English system for units of measure. *Id.* § 317-21-110.[12] They prescribe uniform standards for tank vessels operating within Washington State waters with respect to "practices, policies, and procedures" in watches (*id.* § 317-21-200), navigation (*id.* § 317-21-205), engineering (*id.* § 317-21-210), prearrival tests and procedures (*id.* § 317-21-215), emergencies (*id.* § 317-21-220), alcohol and drug testing (*id.* § 317-21-235), evaluation of crew fitness and performance (*id.* § 317-21-240), and ship management, including oversight, overall program, specific program elements, vessel visitation, and preventive maintenance (*id.* § 317-21-260). They prescribe a uniform crew training program (*id.* § 317-21-230) and uniform work hours (*id.* § 317-21-255). The prescribed "bridge resource management system" must be uniform "throughout the owner's or operator's fleet." *Id.* § 317-21-200(2).

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11 More than 95 percent of the United States' foreign trade is transported by vessels. U.S. DEPARTMENT OF TRANSPORTATION, AN ASSESSMENT OF THE U.S. MARINE TRANSPORTATION SYSTEM: A REPORT TO CONGRESS (1999), Introduction. And more than 97 percent of that ocean borne foreign trade is carried aboard foreign-flag vessels. Derived from U.S. MARITIME ADMIN., 1997 ANNUAL REPORT 52, table 13.

12 The Washington State regulations thus reject the metric system, which is the prevalent international system for units of measure. For a recent example of the hazards of converting between units of measure, see Andrew Pollack, *Two Teams, Two Measures Equaled One Lost Spacecraft*, N.Y. TIMES, October 1, 1999, at A1.

Unfortunately, the benefits of "uniformity" in this instance are eliminated, indeed reversed, by the state's necessarily narrow focus. Local regulation of a multistate or multinational industry will always cause disparate mandates. That is why the Constitution places control of foreign affairs and regulation of foreign commerce with the national government. More important in this respect, it is why the United States and the *Amici* Governments place such importance in IMO and the treaties that have been developed under its auspices. Recognition that local, even national, regulation of ships is often counterproductive is the *raison d'être* of IMO: "Because of the international nature of the shipping industry, it had long been recognized that action to improve safety in maritime operations would be more effective if carried out at an international level rather than by individual countries acting unilaterally and without co-ordination with others." IMO PAMPHLET at 3. Once the United States has determined that the interests of "the country as a whole" are best served by a treaty designed to provide uniformity in an area of international commerce, a state "cannot refuse to give foreign nationals their treaty rights because of fear that valid international agreements might possibly not work completely to the satisfaction of state authorities." *Kolovrat v. Oregon*, 366 U.S. 187, 198 (1961). *See also Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 444-51 (1979).

Because the State of Washington is not a nation state, its regulations manifest an understandable lack of consideration for the role of reciprocity in international maritime relations. Only nation states may bestow their nationality on vessels engaged in international navigation. Thus the State of Washington cannot be a flag state, and no vessels engaged in foreign commerce fly its flag. As noted, however, the restrictions that the state places upon

foreign-flag vessels will, insofar as other nation states are concerned, be attributed to the United States. Similarly, the Washington State regulations indicate a lack of concern for the prospect that other states within the United States or equivalent subdivisions of other federally administered nations will impose special restrictions on vessels engaged in international commerce. Again, it is the United States and the other maritime nation states, not Washington State, that will suffer the consequences of such multifarious regulation. *Cf. Japan Line, Ltd., supra,* 441 U.S. at 453.

From the viewpoint of nations whose vessels engage in international trade, the Washington State regulations at issue here are incompatible with the principles of uniformity and reciprocity that have long been recognized by the United States and other maritime nations as key to adopting, implementing, and enforcing effective international standards and regulations for ships, including shipboard measures for protecting the marine environment. Whatever minimal special protection the State of Washington might hope to achieve through its imposition of divergent regulations on vessels engaged in international commerce will be offset many fold by the obstacles that these and similar divergent regulations raise for the international maritime community, including the United States and the *Amici* Governments, in its efforts to enhance protection of the marine environment throughout the United States and the world. Nor will any special benefit Washington State might derive prevent its regulations from being a violation of the United States' treaty obligations.

CONCLUSION

For the foregoing reasons, the Court should reverse that portion of the June 18, 1998 decision of the United States Court of Appeals for the Ninth Circuit (as amended on August 31, 1998) that affirmed the November 18, 1996 judgment of the United States District Court for the Western District of Washington.

Respectfully submitted,

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